

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

April 7, 2009

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**RE: City of Milford v. Key Properties Group, LLC**  
**C.A. No. S07C-07-023-ESB**  
**Letter Opinion**

Dear Counsel:

This is my decision on Key Properties Group, LLC's Motion for Stay or Injunction Pending Appeal in this condemnation case involving the City of Milford. I granted Milford's request to condemn a portion of Key's property for a temporary construction easement and a permanent utility easement on December 31, 2008. Key then filed an appeal of my decision with the Supreme Court. Milford is now using the easements to install underground utilities on Key's property. Key wants me to order Milford to stop until the Supreme Court decides Key's appeal.

Under Supreme Court Rule 32(a), there are four factors that I must consider in addressing a request for a stay: (1) the movant's likelihood of success on the merits; (2) whether the movant would suffer irreparable harm absent a stay; (3) whether any other interested party would suffer substantial harm if the court granted the stay; and (4) whether the grant of the stay would harm the public interest.<sup>1</sup>

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<sup>1</sup> *B.F. Rich Co. v. Gray*, 2006 WL 3872830, at \*1 (Del. Ch. Dec. 15, 2006).

I have considered these four factors and concluded that each one weighs in favor of denying Key's motion for a stay. One, I have already considered the case on the merits and ruled in favor of Milford. Two, I do not believe that Key will suffer irreparable harm if the stay is not granted. Milford is installing underground utilities on Key's property in an area that was already reserved by Milford and Key for these utilities. Given this, and the fact that if Key ultimately prevails in this case it may be able to force Milford to remove the utilities, there is no reason to believe that Key will suffer irreparable harm if the stay is not granted. Three, I do believe that another interested party, DLM, LLC, the owner of the property next to Key's property, will suffer substantial harm if I grant the stay. DLM has waited for a long time to get sewer service to its property so that it can move forward with its development plans. The lengthy litigation between Milford and Key has already delayed DLM for a long time and a stay would only further delay DLM. Four, I believe that the public interest would be harmed if I granted a stay. Milford is, in this case, merely carrying out its duty to provide sewer service to the public. The public interest would certainly be harmed by yet another delay.

Therefore, Key Properties Group, LLC's motion is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office